Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93-31

In the Matter of	)	
	)	
Amendment of Parts 1, 2 and	)	PR Docket No. 92-80
21 of the Commission's Rules	)	
Governing Use of the Frequencies	)	
in the 2.1 and 2.5 GHz Bands	)	

TO: The Commission

PETITION FOR RECONSIDERATION

American Telecommunications Development, Inc. ("ATD"), pursuant to Section 1.106 of the Commission's rules, hereby submits, pro se, its Petition for Reconsideration, seeking reconsideration of the Commission's amendment of 47 C.F.R. §§ 21.33(b) and 21.901 (f)(1) deleting the portions of the rules which allow formation of settlement agreements among pending MDS applicants. In support thereof, the following is stated:

The Commission adopted and released a Notice of Proposed Rule Making, PR Docket No. 80, 7 FCC Rcd 3266 (1992)("NPRM"), soliciting public comment on proposals aimed at reducing the delays associated with the processing of applications for stations in the Multipoint Distribution Service ("MDS").[1] Among the Commission's proposals in the NPRM was to disallow partial and full settlement agreements among MDS applicants. 7 FCC Rcd at 3271. The Commission proposed

to apply this prohibition to pending as well as future applicants. In response to the NPRM comments were filed on behalf of a number of owners and operators of wireless cable systems and others with interests in the wireless cable industry. After reviewing the record, the Commission issued and adopted a Report and Order, FCC 93-31, adopting several of the proposals discussed in the NPRM. Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, 58 Fed. Reg. 11,795 (March 1, 1993) (to be codified at 47 C.F.R.§§ 1, 2, 21).

Of paramount concern to ATD is the Commission's decision to ban settlement agreements among pending MDS applicants as a way to deter speculative applications. In the Report and Order the

goal and, in fact, will only further delay the provision of wireless cable service to the public. Consequently, the Commission's decision to apply the ban to pending applicants should be reconsidered.

Speculative applications are a significant problem in the wireless cable industry and ATD agrees with the Commission's decision to prohibit settlement agreements among future MDS applicants as a valid and legitimate way to deter such speculation. However, the Commission makes an unjustified assumption by deciding to ban settlement agreements among pending applicants as a further way to deter speculative applications. There is no basis to conclude, as the Commission does, that implementation of the ban to pending applicants will serve as an additional deterrent to future speculative applications. The applications have already been filed with the Commission and, as pointed out in a number of comments, it is unlikely that the applications will be withdrawn.[2] And for one simple reason: there is no incentive to withdraw them. Applicants who have already spent the money on their applications will choose to take the chance that they will win the lottery rather than lose the money already spent.

The Commission's decision to apply the settlement prohibition to pending applicants will prejudice existing operators

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[2] See, e.g., Reply Comments of WCA at 12-13; Comments of American Telecommunications Development, Inc. at 3; Comments of Simon A. Hershon and Mary D. Drysdale, Tenants by the Entirety at 5-6.

by delaying the grant of licenses which bona fide operators then pursue through Management Agreements and other appropriate channels. In this case, the Commission has failed to consider the adverse impact that banning settlement agreements among pending applicants will have on wireless cable operators. The fact is that [redacted]

to the public if its hands are tied. And its hands will be tied if the Commission further delays the grant of additional licenses by disallowing settlements among pending applicants. It is within the power of the Commission to facilitate the development of the wireless cable industry and the Commission should take this opportunity to give the industry assistance by encouraging full market settlements among existing applicants and expeditious issuance of licenses.

Although the Commission's stated goal of "ensur[ing] that speculative applicants are not rewarded" is laudable, that is not the Commission's primary goal or responsibility regarding the

agreements among pending applicants hereby ensuring the expedited provision of wireless cable service to the public.

By prohibiting settlement agreements among current applicants who applied under rules that allowed them to form settlement groups, the Commission is inviting substantial litigation by current applicants who view the Commission's change of the rules in midstream as highly prejudicial and unfair.[3] Such litigation would take additional time away from an already overworked staff and deplete overtaxed resources. The ongoing litigation over the mid-stream rule changes regarding cellular unserved area applicants is an example of a situation that the Commission need not repeat vis a vis revision of the settlement rules. See, MTel Cellular Inc. v. United States of America and Federal Communications Commission, Docket No. 93-1017; MTel Cellular, Inc. v. Federal Communications Commission, Docket No. 93-1018.

[3] Although the Commission cites Hispanic Information & Telecommunications Network, Inc. v. FCC, 865 F.2d 1289 (D.C. Cir. 1989) as justification for its action, that case is ambiguous at best -- especially considering the current litigation over the identical issue in other services.

In view of the foregoing, the Commission's adoption of the proposal to ban settlement agreements among pending applications should be reconsidered and the rules amended to allow such settlement agreements.

Respectfully submitted,
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March 31, 1993

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